

HUMAN SERVICES BOARD

# INTRODUCTION

## Procedural History

On July 8, 2009, the parties had an in-person status conference. Part of the initial issue dealt with petitioner's fluctuating income. The hearing officer directed the Department to take the information petitioner provided and recalculate petitioner's Food Stamps.

The Department recalculated petitioner's Food Stamps and determined that petitioner had been underpaid for the months of April through June 2009. However, the Department declined to repay the underpayment. A telephone status conference was held on August 5, 2009 and the parties were given a briefing schedule regarding how an underpayment should be treated under the Food Stamp regulations. The briefing highlighted the facts that continued in dispute. An evidentiary hearing was held October 14, 2009.

The decision is based on the testimony, documents, and legal arguments of the parties.

#### FINDINGS OF FACT

1. The petitioner is a sixty-two year old disabled individual. At the time petitioner applied for Three Squares Vermont, she was not receiving any benefits from the Social Security Administration. Petitioner receives \$885 per month in Social Security Disability benefits and has done so since approximately April 2009.

Petitioner works part-time for two employers, a gallery and a furniture store. Both jobs are permanent part-time jobs whose hours fluctuate. There may be periods in which petitioner does not work. Petitioner has worked at the

gallery for 2.5 years and is paid monthly. She has worked for the furniture store for 4 years and is paid weekly.

The petitioner is part of a two-person household.

2. The petitioner decided to apply for Three Squares Vermont in January 2009 after reading information that the program had expanded. This case involves petitioner's first application for Three Squares Vermont. She downloaded the 14 page application from the Department's website and sent the completed application to the Department.

3. The petitioner's case was assigned to A.K., an economic program benefits specialist.

4. A.K. conducted a telephone interview with petitioner during early February 2009. A.K. first thought that the interview was in-person until she heard petitioner's testimony and later corrected her testimony that the interview was on the telephone. A.K. normally conducts in-person interviews lasting at least 30 minutes.

5. The petitioner testified that the telephone interview lasted ten to twelve minutes. The petitioner indicated that she told A.K. that her income fluctuated because her hours fluctuated. A.K. testified that she does not recall petitioner telling her that petitioner's income fluctuated. As part of the interview, A.K. requested

petitioner's wage stubs/information from the past 30 days. Petitioner was not informed about the medical deduction allowed under the Three Squares program for recipients whose medical expenses are more than \$35 per month.

6. The petitioner was found eligible for Three Squares Vermont.<sup>1</sup> Petitioner's case was to be reviewed in six months time. Petitioner was under the impression that she would give wage and income information at the time of her review. Petitioner credibly testified that she was not adequately informed of how the program worked including reporting requirements. Petitioner did not receive a change form from the Department upon being found eligible for Three Squares.

7. On or about April 17, 2009, the Department sent petitioner a Notice of Decision reducing her Three Squares from \$367 per month to \$175 per month effective May 1, 2009 based on information that her earned income remained the same but that her unearned income increased from zero to \$1,328 per month.

8. Petitioner testified that she did not receive the April 17, 2009 Notice of Decision until May 2009. According to petitioner, she called A.K. and left a message. When she

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<sup>1</sup>It should be noted that petitioner was not given a medical deduction until after this case commenced and petitioner's case was given more complete scrutiny.

did not receive a call back, petitioner sent A.K. a letter dated May 4, 2009 explaining her situation.

9. On or about May 15, 2009, the Department sent petitioner a Notice of Decision that her Three Sqaures benefits would close effective May 31, 2009 because petitioner's unearned income increased from \$1,328 to \$1,775.20 per month. They kept petitioner's earned income at the same amount.

10. A.K. testified that the Department received a Bendex from the Social Security Administration showing petitioner received \$885 for the month of April. A.K. testified that the Department received infromation from the Vermont Department of Labor showing petitioner receiving unemployment compensation benefits for the months of April and May 2009. A.K. did not verify this information with petitioner. A.K. did not verify with petitioner whether petitioner remained employed and was earning the same amount of wages.

11. Petitioner did not work at the gallery during April and May 2009 because they did not have hours for her. Petitioner worked reduced hours at the furniture store because they had less work for her.

12. A.K. testified that she did not learn about the May 4, 2009 letter until she spoke to petitioner and her representatives on May 27, 2009. A fair hearing was requested on May 28, 2009.

13. During the course of the fair hearing, petitioner's current eligibility for Three Squares Vermont was correctly calculated and her reporting responsibilities were explained. As part of the fair hearing process, petitioner's eligibility for April, May and June 2009 was correctly calculated. Petitioner was underpaid benefits for those three months.

ORDER

The Department's decision is reversed.

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low income households. Food Stamp Manual (FSM) § 271.1. The amount of Food Stamps a household receives is based upon a complex formula that is set out in the Food Stamp Manual (FSM) and that reflects the level of federal funding for the Food Stamp Program. FSM § 273.9.

Due to the complexity of the program, caseworkers have a responsibility to help applicants and recipients. 7 C.F.R. § 272.5(b)(2). This responsibility includes caseworkers

informing applicants and recipients about the eligibility criteria of the various programs. Lavigne v. Department of Social Welfare, 139 Vt. 114 (1980). See 7 C.F.R. § 273.2(f)(5)(i). In particular, FSM § 273.2(e)(1) states:

. . .The interviewer shall not simply review the information the information that appears on the application, but shall explore and resolve with the information unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. . .

If a caseworker receives information from computer records that may lead to a reduction or a termination of benefits, the caseworker must check this information before taking action. 7 C.F.R. § 273.2(f)(9)(iv).

FSM § 273.2(f)(7)(i) states:

. . .The State agency may also use SDX and BENDEX data to verify other Food Stamp eligibility criteria....The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. . .

The problem in this case is that A.K. did not give the petitioner the opportunity to verify the information the Department received about petitioner's unearned income and the assumptions the Department made about petitioner's earned income. As a result, petitioner's benefit levels for the

months starting with April 2009 were not correctly determined leading to an underpayment of benefits for three months.

FSM § 273.17a sets out the criteria for when the Department must repay an underpayment to a household as follows:

1. The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency, or by an administrative disqualification for intentional program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations, that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than 12 months prior to whichever of the following occurred first:
  - i The date the State agency receives a request for restoration from a household; or
  - ii The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

The agency error follows from the caseworker's failure to contact the petitioner after the Department received the Bendex and the information from the Department of Labor so that the petitioner could verify the correct household income. This error gives rise to the entitlement referenced in FSM § 273.17a.



The Department argues that petitioner should not receive the underpayment. The Department alleges that petitioner failed to notify the Department of changes to her income.

There are several problems with the Department's argument. A recipient's obligations to report depend on whether the recipient is on simplified reporting, monthly reporting, etc. For example, a recipient on simplified reporting, reports every six months unless their gross income increases and is over the gross income limit. Others are on monthly change reporting.

FSM § 273.12 states:

a. Household Responsibility to Report.

1. Certified households are required to report the following changes in circumstances:

- i. Changes in the sources of earned or unearned income.
- ii. Changes in the hourly earnings or salary rate, increases to 40 or more regularly scheduled hours of work per week, or decreases to fewer than 40 regularly scheduled hours of work per week.
- iii. Changes in the amount of gross monthly unearned income of more than \$25. . .

2. Certified households shall report changes within 10 days of the date the change becomes known to the household.

4. The reporting requirements provided in this section constitute the only food stamp reporting requirements.

b. Report Forms

1. The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days . . . The change report shall, at a minimum, include the following:

. . .

v. A statement describing the changes in household circumstances contained in 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

. . .

4. A change form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. . .

In petitioner's case, she was under the impression that she needed to supply information at her six month redetermination. This was petitioner's first experience receiving Three Squares Vermont. She testified credibly that she was not informed of the reporting requirements and that she was confused by the program. Little time was initially spent with petitioner to inform her of the program's complexities.

There is no indication petitioner received a change report form upon being found eligible for the program. She was not aware of the possible medical deduction in her case.

Moreover, if petitioner had been contacted by her caseworker as mandated by the regulations after receipt of the Bendex and other information, her benefits could have been correctly determined in a timely manner. The failure to do so is agency error.

Based on the foregoing, the Department's decision to deny payment of petitioner's underpayment of Three Squares benefits is reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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